

**Before the
Federal Communications Commission
Washington DC**

In the Matter of)	
)	ET Docket No. 03-104
Inquiry Regarding Carrier Current Systems,)	
Including Broadband over Power Line Systems)	

REPLY COMMENTS OF EXELON CORPORATION

Exelon Corporation submits these reply comments in response to the Commission’s Notice of Inquiry (“NOI”) in this proceeding.¹ Exelon strongly encourages the Commission to avoid enacting non-technical regulations that would have the effect of discouraging the implementation of BPL technology as an alternative broadband distribution vehicle.

Exelon, through its electric utility subsidiaries, provides critical infrastructure services to many customers in this country. PECO Energy Company (“PECO”) supplies electric service to approximately 1.5 million customers in southeastern Pennsylvania (including Philadelphia).² Commonwealth Edison Company serves approximately 3.4 million electricity customers in northern Illinois (including Chicago).

In the NOI, the Commission seeks comment on technical issues associated with broadband over power line (“BPL”) technology, not with non-technical conditions that might be imposed upon on the implementation of BPL by electric utilities.³ Consistent

¹ FCC 03-100, released April 28, 2003.

² PECO also serves approximately 430,000 natural gas customers in southeastern Pennsylvania.

³ See separate statements of Commissioners Copps and Adelstein.

with the Commission's focus, the vast majority of the more than 3000 comments filed in this proceeding have restricted themselves to technical issues.

Nevertheless, two sets of comments by cable operators ignore technical issues and argue for the Commission to impose non-technical pre-conditions on the implementation of BPL by electric utilities.⁴ Knology argues that the Commission must institute safeguards to prevent "monopoly abuses" of pole attachment arrangements to the disadvantage of cable or telecommunications providers attaching to utility poles under section 224 of the 96 Act. It would virtually require utilities to "prove the negative" – that they are not abusing attachers – and to comply with new, more stringent pole attachment requirements before they are permitted to utilize BPL. The Joint Cable Operators warn of potential abuse of contractual survey requirements and ask that the Commission be prepared to impose additional restrictions on utilities "to the extent that Access BPL systems pass through the trial stage."

However, the Commission has already promulgated rules and issued orders clarifying the rights of attachers under Section 224 of the Telecommunications Act. Those rights are independent of any potential involvement of pole-owning utilities in communications-related activities. There is no justification or sound jurisdictional basis for the Commission to impose additional non-technical requirements on utilities choosing to implement advanced technology, effectively giving attaching entities greater rights in those situations.

As a policy matter, the Commission must be very wary of over-regulating and imposing new burdens on the implementation of new technology. At this time, the

⁴ See comments of Knology and comments of the Joint Cable Operators (Charter Communications and the cable television associations of Florida, Georgia, Ohio, South Carolina, Texas).

Commission is wise to focus only the issue of whether its rules contain any technical barriers to the deployment of BPL technology. As several parties have indicated, imposing non-technical restrictions on the implementation of BPL will only discourage its introduction and deployment.⁵

The innovation-thwarting effect of over-regulation is confirmed by the industry's experience with Open Video Systems.⁶ Such systems, which were to be operated generally by local exchange carriers, were envisioned as being the vehicle for facilitating the distribution of independent video programming outside the structure of existing cable systems. However, the requirements imposed on operators of Open Video Systems were so complicated and limiting that most local exchange carriers who chose to become involved in the distribution of video programming did so via affiliates that were separate, stand-alone traditional cable operators. In other words, the potential benefits of Open Video Systems as an alternative vehicle for the distribution of video programming, especially independent video programming, were never realized.

In this case, Exelon suggests that imposing complicated and onerous non-technical restrictions on utilities' implementation of BPL technology will certainly ensure that BPL will not be deployed on a wide-spread basis and any potential benefits that BPL may have had as an alternative broadband distribution mechanism will be lost.

⁵ Comments of Southern Linc, et al. at 11-12, Current Technologies at 13, Cinergy at 4-5.

⁶ See generally CS Docket No. 96-46.

In summary, Exelon strongly encourages the Commission to avoid enacting non-technical regulations that would have the effect of discouraging utilities' implementation of BPL technology.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael S. Pabian", with a large, stylized loop at the end.

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